

APPEAL NO. 010507

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was scheduled for October 4, 2000. The appellant (claimant) did not appear; however, her attorney and the attorney for the respondent (carrier) were present. The hearing officer mailed a letter to the claimant on October 4, 2000, requesting that she contact the Texas Workers' Compensation Commission (Commission) within 10 days to show good cause for her failure to appear at the October 4, 2000, hearing. On October 12, 2000, the claimant contacted the Commission by telephone and explained that she had not been able to attend the hearing because of transportation problems. Thus, the hearing was reset for December 12, 2000. For reasons that are not apparent from the record, the hearing was again rescheduled for February 13, 2001. No one appeared at that hearing. At that point, the hearing officer closed the record and determined that the claimant did not sustain a compensable injury on _____, and that she did not have disability. In her appeal, the claimant urges that she sustained a compensable injury, had disability, and requests a hearing. The appeals file contains no response to the claimant's appeal from the carrier.

DECISION

Affirmed.

The hearing officer did not err in closing the record on February 13, 2001, following the claimant's second failure to appear at the hearing, and entering a decision adverse to the claimant. The situation here does not present, as in Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997, a "single" failure on the part of the claimant to appear at the hearing. By contrast, the claimant here had two opportunities to present her case and she did not avail herself of the opportunity to do so. The hearing officer followed the process outlined for handling cases where parties fail to appear at the hearing. See Texas Workers' Compensation Commission Appeal No. 990028, decided February 22, 1999, and the decisions cited therein. Accordingly, we cannot agree that the hearing officer erred in closing the record on February 13, 2001, after the second failure of the claimant to appear at the hearing. The claimant had the burden of proving that she sustained a compensable injury and that she had disability. As the claimant presented no evidence, the hearing officer properly determined that the claimant did not sustain that burden.

The decision and order of the hearing officer are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge